



Owner of damaged Erie shop: Federal charge too harsh

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Federal charge carries mandatory minimum sentence of five years in prison.

Hannah Kirby saw the video of her downtown coffee shop being vandalized and set aflame just moments after it happened late on May 30.

She and her husband spent much of that night talking it over.

"In the moment, watching that was painful," Kirby said.

She knew the damage to her shop, Ember + Forge, at 401 State St., and the rest of the chaos that took over downtown Erie on the night of May 30, would generate a lot of talk in the community.

She wants to keep that conversation focused on racial justice.

“We talked a lot about this being a vehicle for change to our system,” she said. “And if that’s what our business needs to be, then we’re here for it.”

In an interview with the Erie Times-News, Kirby said she also believes the federal case against the man accused of setting the fire at Ember + Forge, 28-year-old Melquan Barnett, is an example of how the criminal justice system is weighted against Black defendants.

The government charges that Barnett set the fire in Ember + Forge after a woman broke out one of the shop’s windows along State Street. The fire was quickly extinguished.

Barnett faces a single felony count of malicious destruction of property by fire, a charge that will bring a mandatory minimum sentence of five years in federal prison if he is convicted. The maximum possible sentence for the charge is 20 years, though maximum sentences are rare.

Kirby said she would like to see the federal charge against Barnett dismissed and the case handled in state court, where penalties are generally less stringent.

“I think that being part of this system that we’re in and trying to look at what should happen to Melquan is really challenging, because it’s already set against him,” Kirby said. “I think that for me, the federal charges are extreme.”

The unrest on May 30 erupted several hours after a separate, peaceful protest in memory of George Floyd, a Black man who died in police custody in Minneapolis.

Investigators have since charged 17 people with various crimes in what police described as a riot that took over downtown Erie later on May 30 and into the early morning hours of May 31. Erie police said 14 officers were injured during the rioting.

Barnett was originally charged in state court with arson, rioting, and other offenses, but the case was quickly transferred to U.S. District Court in Erie.

The federal charge is based in part on the fact that Ember + Forge engages in “interstate commerce” through its use of Facebook and Instagram, sale of gift cards over the internet, and purchase of coffee cups from New York, according

to charging documents.

Kirby sees that as a stretch.

Barnett's lawyer, Charles Sunwabe, agrees.

"This matter belongs in state court," Sunwabe told the Erie Times-News. "The charges are really trumped up, in my view."

The U.S. Attorney's Office for the Western District of Pennsylvania, which includes Erie, declined to comment on the case.

"The U.S. Attorney's office does not comment on charging decisions," said Margaret Philbin, a spokesperson for the office, in an email.

Barnett maintains his innocence in the fire, Sunwabe said, and Kirby's opinion on the case isn't likely to change a prosecutor's mind.

But Sunwabe said he appreciates Kirby's perspective.

"People should focus on why there's a demonstration going on in this country, and I think that's not lost on the owner of this store," he said. "Most people in this country believe that systemic racism has reduced African-Americans to second-class citizens."

Kirby also drew a comparison between Barnett's treatment and the treatment of an Erie police officer who was caught on video kicking a seated protester during the same disturbance on May 30.

Unlike Barnett, the officer has not been charged with a crime or named publicly, Kirby said.

Erie Mayor Joe Schember announced a week ago that the officer's actions were appropriate under the police department's use-of-force policies, but that the officer would receive a three-day unpaid suspension.

The case was turned over to the Erie County District Attorney's Office, which has made no announcements about a decision, and the protester's lawyer has asked the state Attorney General's Office to take over the case.

"If we're going to make examples of folks, why is it uneven?" Kirby asked.

The damage to her business, she said, was fairly minimal and the shop reopened soon after. Though things could have been far worse — there are occupied apartments above the coffee shop — the fire did little more than scorch a tabletop, she said.

“Actions have consequences, but we also need to, I think at least, consider impact,” Kirby said.

A mandatory minimum won’t allow a judge to consider that if Barnett is convicted. That’s a key issue that proponents of criminal justice reform have been raising for years.

Celeste Trusty, the Pennsylvania state policy director for the advocacy group Families Against Mandatory Minimums, said the sentencing mechanisms are problematic because they’re created by legislatures and take away discretion from judges.

“If we’re looking for true justice as the goal in the criminal justice system, sentencing decisions should not be made by legislative bodies who are not in the courtroom,” she said.

Charges with mandatory minimums are disproportionately used against Black defendants, Trusty said, and contribute to mass incarceration by keeping defendants locked up for longer than they might be otherwise.

It’s frustrating, Trusty said, because judges can’t consider mitigating factors and issue a more lenient sentence, even if they think it’s appropriate.

In Barnett’s case, for example, Kirby could express her views at Barnett’s sentencing if he is convicted, but the judge would still be required to follow the mandatory minimum sentence.

“In this case, where is the justice if nobody agrees but everyone’s hands are tied?” Trusty asked.

U.S. Magistrate Judge Richard A. Lanzillo arraigned Barnett on Thursday in U.S. District Court in Erie. Barnett, through his lawyer, entered a not-guilty plea.

Barnett is being detained without bond in the Erie County Prison while his case is pending.

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